



Attorney Docket No. 400694/YP/EE

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

YAMAGUCHI et al.

Application No. 09/587,340

Filed: June 5, 2000

For: FLAT CORE BRUSHLESS MOTOR

Art Unit: 2834

Examiner: K. Addison

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#8/Request
for Recon.
Hawkins
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REQUEST FOR RECONSIDERATION

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

In response to the Official Action mailed August 15, 2001 Applicants request reconsideration. No claims are cancelled or added so that claims 1-9 remain pending in this application.

The non-final rejection mailed August 15, 2001 is identical to the non-final Action mailed exactly five months earlier, on March 15, 2001. As the Examiner provided no further explanation, Applicants are not certain what further information is required in order to obtain an explanation of the grounds for the rejection or to correct errors in the rejection. Accordingly, no amendment is made because no further amendment is required.

Applicants again respectfully request an explanation as to what treatment has been given to claims 8 and 9 of this patent application. There are nine claims pending but both of the Official Actions reject only claims 1-7 as anticipated and do not mention claims 8 and 9. Although an explanation was requested in the previous response as to the status of claims 8 and 9, no explanation has been given. Therefore, Applicants continue to presume that the Examiner intended to reject all of claims 1-9 pursuant to 35 U.S.C. §102(a).

Again, the Examiner cited a document that is not a publication in making the prior art rejection. The present patent application is based upon, but does not claim priority of, two Japanese patent applications, JP 9-364162, filed December 17, 1997 and JP 9-364163 also filed December 17, 1997. As is the practice in Japan and in many other countries,

now including the United States in most instances, these Japanese applications were published approximately 18 months after their filing dates, (actually July 9, 1999, about 20 months from the filing date). The Examiner supplied as a reference one of those publications, namely JP 11-187634, a publication that corresponds to the patent application number JP 9-364163. That publication is available as a reference as of its publication date, July 9, 1999. The patent application itself is not a publication and is not available as a reference as of its filing date, December 17, 1997. The other Japanese patent application, namely JP 9-364162 was published simultaneously, i.e., on July 9, 1999 with publication number 11-187637. These facts were explained in the previous response and the Examiner was requested to correct the Official Action and the PTO-892 Form to refer to the publication number since it is publication that is applies in rejecting the claims, not the underlying Japanese national patent application. However, neither the Official Action nor the PTO-892 Form has been corrected.

As pointed out in the previous response, the two Japanese patent applications name Mr. Yamaguchi as a common inventor. In addition, JP 9-364162 also designates Mr. Arai as a co-inventor. JP 9-364163 designates Mr. Koyanagi as a co-inventor. The U.S. application combines the disclosures of those two Japanese patent applications and therefore designates, as it must, all three, Mr. Yamaguchi, Mr. Arai, and Mr. Koyanagi, as inventors. This joint inventorship does not negate and, in fact, reinforces, the conclusion that the publication JP 11-187637 is not a description of the invention of claims 1-7 or claims 1-9 before the invention was made by the applicant for patent, because the same people who made the invention disclosed in the publication are the applicants. The applicants cannot do the same work at different times. Therefore, the rejection is legally erroneous and therefore again traversed.

As stated in the previous response, since the invention claimed was made by the present applicants, the publication in Japan of JP 11-187634 cannot be prior art pursuant to 35 U.S.C. 102(a) because it does not represent a description of the invention in a printed publication *before* the invention by the applicants for patent. If the position upon which the rejection is founded were correct, then the combination of foreign patent applications, particularly where, as here, the foreign applications were filed simultaneously, into a single U.S. patent application would be prohibited. There is no such prohibition, demonstrating that 35 U.S.C. 102(a) has no application to the present facts and cannot be properly used to reject either claims 1-7 or claims 1-9 of the present patent application.

Although not stated in the Official Action, the Examiner seems to be seeking the filing of some additional information, paper, or declaration. No such additional filing is required in the present circumstances, although other situations may require additional

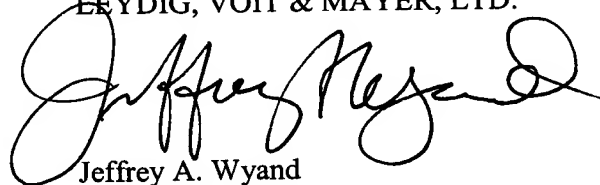
showings to overcome such a rejection. The facts of the present situation are entirely different from the situation in In re Katz, 215 USPQ14 (CCPA 1982), where there was a publication of the invention that included co-authors who were not co-inventors. The added inventor in the U.S. application versus JP 11-187634 is an inventor named in the other of the Japanese patent applications upon which the present U.S. patent application is based. Likewise, there is no evidence here that raises any question about whether the inventorship of the present application is proper, as in Ex parte Kroger, 218 USPQ370 (Bd. App. 1982) where a putative inventor protested his omission from a patent application. The inventorship of the present application is entirely consistent with the two Japanese publications and with the priority designation of the Declaration filed with the present patent application and signed by all three inventors.

Not even the MPEP, which lacks the binding effect of statutes, court decisions, and regulation, requires the filing of any further document in the present instance to overcome the rejection. "In the situation described in Example 2, an affidavit under 37 CFR 1.132 may be submitted...", MPEP 7116.10. This permissive language makes clear that there is no requirement for an affidavit here. Accordingly, the documents provided to the Examiner, namely the Declaration filed with the present application, identifying the underlying Japanese patent applications, the publication JP 11-187637 supplied by the Examiner, and an abstract of JP 11-187634 attached here, demonstrate that there is no ground for maintaining the rejection made in this patent application.

Further reconsideration and withdrawal of the rejection of claims 1-7 and allowance of claims 1-9 are appropriate and earnestly solicited.

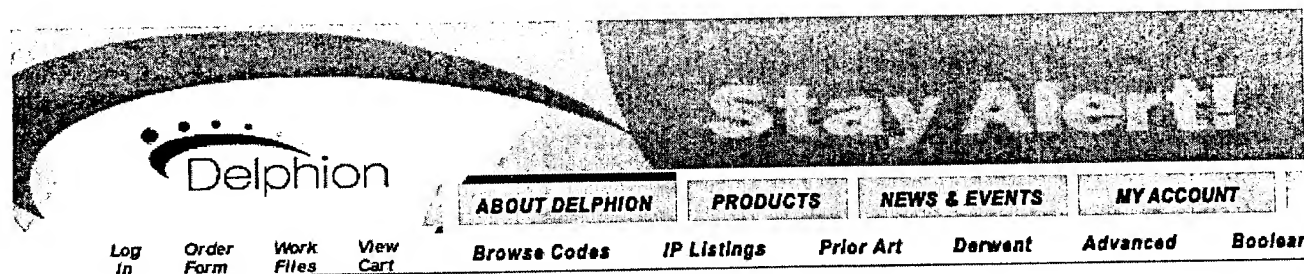
Respectfully submitted,

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JAW:ves



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Title: **JP11187637A2: FLAT-TYPE CORED BRUSHLESS MOTOR**
► [Want to see a more descriptive title highlighting what's new about this invention?](#)

Country: **JP** Japan
Kind: **A**

Inventor(s): **YAMAGUCHI TADAO**
ARAI TORU

Applicant/Assignee: **TOKYO PARTS IND CO LTD**
[News, Profiles, Stocks and More about this company](#)



Issued/Filed Dates: **July 9, 1999 / Dec. 17, 1997**

Application Number: **JP1997000364162**

IPC Class: **H02K 29/00; H02K 1/14; H02K 21/22;**

► [Interested in classification by use rather than just by description?](#)

Priority Number(s): Dec. 17, 1997 [JP19971997364162](#)

Abstract: **Problem to be solved:** To enable thinning without crushing even if there is an armature has bulge, and prevent the deterioration of motor characteristics, by making it unnecessary to reduce number of core lamination sheets.



Solution: In a flat-type brushless motor constituted by mounting a stator core 3 formed by winding an armature coil 3a around a plurality of salient poles 1a on a stator base 1, recesses 1b, 2a for relieving the armature coil are formed in the stator base side 1, 2. As a means for mounting the stator core 3, struts 1c raised collectively from the stator base 1 are used. Holes formed after the struts 1c are press-worked are used as a part of the recesses 1b for relieving the armature coil.

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► [See a clear and precise summary of the whole patent, in understandable terms.](#)

Family: [Show known family members](#)

Other Abstract Info: **DERABS G1999-451335 DERABS G1999-451335**

Foreign References: **No patents reference this one**

